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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,941	04/13/2004	Bradley Emalfarb	00254P0076	4428
32116 7590 02/01/2008 WOOD, PHILLIPS, KATZ, CLARK & MORTIMER 500 W. MADISON STREET SUITE 3800 CHICAGO, IL 60661			EXAMINER WEINSTEIN, STEVEN L	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 02/01/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/822,941

Applicant(s)

EMALFARB, BRADLEY

Examiner

Steven L. Weinstein

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 4,6-8,10-12 and 15-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,9,13 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

Art Unit: 1794

Claims 1-3,5,9,13,and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable in view of Large (WO 95/03981), as further evidenced by Replogle et al (2,081,152) and Waters (2,166,513), further in view of Morimoto (JP2001-253452).

The references have been fully discussed in the last Office action mailed 10/12/07. Claim1 now recites that the closure system being in its first state and operatively engaged with the container in the opened state and in the first state configured to prevent dispensing of the alcoholic beverage in the container form the storage space for consumption. Although the language is some what confusing as to when this relationship exists, what the definition of "opened" is (e.g., closed, but having been unsealed?), and what "operatively engaged" means, the claim will be construed that the closure system is associated with a bottle that is somehow not sealed. Clearly, the bottle has to have a closure or the beverage would spill into the closure system, especially when the closure system is a bag. Thus, claim 1 differs from Large in the recitation that the bottle is "opened" whereas Large appears to show an unopened bottle. It is noted again that the term "opened" and "unopened" is broader than applicant appears to construe it. That is, a container that has a cover, cork or cap that is removed is opened and then when such elements are placed back on the container, the container is unopened, and depending on the element and how it is re-applied, the element can look like it was never removed. In any case, as discussed in the last Office action, one of the reasons Large provides a closure system is to provide indication as to whether the bottle has been opened or not; i.e., to provide tamper evidence. Large, and the art taken as a whole, are not seen to be limiting to any type of contents, containers

Art Unit: 1794

or otherwise, opened or unopened. Rather, Large, and the art taken as a whole, are therefore seen to be a generic teaching that when one wishes to know whether a container has been accessed or not, one should provide the container with a closure system that, when opened to access the inner container, cannot be reapplied to the container without evidence that the closure system has been compromised. Therefore, the particular article one wishes to provide indication as to whether it has been accessed, such as the recited container in an opened state, is seen to have been an obvious matter of choice. Applicant is employing a notoriously conventional expedient in the art, i.e. tamper indicating closure systems, and employing it for its well known and intended function. Substituting one article to be associated with a conventional tamper indicating closure system for another article to be associated with a conventional tamper indicating closure system is therefore not seen to be patentable.

All of applicant's remarks filed 11/13/07 have been fully and carefully considered but have not been found to be convincing for the reasons given above.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 1794

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Steve Weinstein*  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1794  
1/30/08